

## **SUBCHAPTER I : PROHIBITION ON OPEN DUMPS**

### **§335.301. Purpose.**

This purpose of this subchapter is to authorize the executive director to evaluate nonhazardous industrial solid waste land disposal facilities and practices, in order to determine whether the facilities or practices constitute open dumps.

### **§335.302. Prohibitions.**

(a) Any solid waste management practice or disposal of industrial solid waste which constitutes the open dumping of industrial solid waste is prohibited, except in the case of any practice or disposal of industrial solid waste under a timetable or schedule for compliance established under the Resource Conservation and Recovery Act of 1976, §4005(c) and §335.304 of this title (relating to Classification of Facilities).

(b) Where a schedule for compliance has not been established by the executive director, no person may cause, suffer, allow or permit any activity of disposal of industrial solid waste at a facility which has been classified as an open dump by the executive director.

### **§335.303. Criteria for Classification of Solid Waste Disposal Facilities and Practices.**

Except to the extent that they are clearly inconsistent with the express provisions of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or the rules of the commission, the regulations contained in 40 Code of Federal Regulations Part 257 are adopted by reference. The executive director will maintain in the offices of the commission a set of the regulations contained in 40 Code of Federal Regulations Part 257 and adopted by reference herein. The regulations may be examined in the library of the Texas Water Commission, Stephen F. Austin State Office Building, 1700 North Congress, Austin.

### **§335.304. Classification of Facilities.**

The executive director may evaluate all existing solid waste disposal facilities, except those exempted under 40 Code of Federal Regulations §257.1, according to the criteria in 40 Code of Federal Regulations Part 257. The executive director shall classify as open dumps all facilities which fail to satisfy these criteria and shall prepare a list of those facilities. This list shall be submitted to the U. S. Environmental Protection Agency for inclusion in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005.

### **§335.305. Upgrading or Closing of Open Dumps.**

(a) All existing industrial solid waste disposal facilities which are classified as open dumps shall be upgraded or closed in accordance with measures specified by the commission so that the facility or practice no longer violates the criteria in 40 Code of Federal Regulations Part 257.

(b) The executive director may establish a timetable or schedule of compliance for any facility

classified as an open dump where the facility owner or operator has demonstrated that other public or private alternatives to comply with the prohibition on open dumping have been considered and such alternatives to so comply cannot be utilized. The schedule of compliance shall specify a schedule of remedial measures and an enforceable sequence of actions leading to compliance within a reasonable time, not to exceed five years from the date of publication of the inventory under the Resource Conservation and Recovery Act of 1976, §4005.

(c) Nothing in this section precludes the executive director from seeking any relief deemed necessary for violation of this subchapter, any provision of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, or any other regulations of the commission nor does this section establish any prerequisite for seeking that relief.

#### **§335.306. List of Interested or Affected Persons.**

The commission shall maintain a current list of agencies, organizations, and individuals affected by or interested in the state plan developed pursuant to the Resource Conservation and Recovery Act of 1976, Subtitle D, which shall include any parties that request to be on the list, the owner or operator of each facility classified as an open dump and any other parties which the commission determines to be affected or interested in the plan.

#### **§335.307. Notification of Classification by Commission.**

(a) Upon determination by the commission that a facility or practice violates any of the criteria set forth in 40 Code of Federal Regulations Part 257 and should be in the open dump inventory under the Resource Conservation and Recovery Act of 1976, §4005(b), the owner or operator of such facility shall be so notified in writing by the commission at least 30 days prior to the initial submission of the classification to the U. S. Environmental Protection Agency. If the owner or operator wishes to contest that determination, he must so notify the commission within 20 days of the date of the notification and include any information indicating that the facility does not violate any of the criteria classification set forth in 40 Code of Federal Regulations Part 257. If the owner or operator fails to respond to the notification, or if the commission determines that the information provided by the owner or operator does not affect its initial determination, the commission shall forward the name of the facility to the U.S. Environmental Protection Agency for publication in the Federal Register. The commission may delete the name of a facility from the list to be forwarded to the U. S. Environmental Protection Agency if, in the opinion of the commission, the information presented by the owner or operator pursuant to this subsection shows that the facility or practice does not violate any of the criteria set forth in 40 Code of Federal Regulations Part 257.

(b) The commission shall also provide written notification of the availability of the results of any classifications pursuant to §335.304 of this title (relating to Classification of Facilities) to all other persons on the list required by §335.306 of this title (relating to List of Interested or Affected Persons), at least 30 days prior to the initial submission of any classifications to the U. S. Environmental Protection Agency.

**§335.308. Complaints.**

To encourage public participation, the commission shall respond to complaints and other information received from the public which relate to any facility evaluated under this subchapter.